

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL T. OLIVER,

Defendant-Appellant.

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UNPUBLISHED

June 1, 2001

No. 220810

Genesee Circuit Court

LC No. 96-054996-FH

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from an order and judgment of sentence revoking his probation and sentencing him to forty to sixty months' imprisonment. MCL 771.4; MSA 28.1134. Defendant was originally sentenced to a term of probation on a conviction of attempted second-degree criminal sexual conduct, MCL 750.92; MSA 28.287; MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). We affirm.

Defendant's sole claim on appeal is that the trial court erred in denying his motion for a continuance to permit newly retained counsel to prepare for the violation of probation hearing. We disagree. The court did not outright deny defense counsel's request for a continuance. It granted a recess to permit him to prepare to cross-examine the prosecution's witness by reviewing certain documents and left open the possibility of a continuance after that witness testified, which counsel later said he did not need. Defense counsel's approval of the manner in which the court accommodated his request constituted a waiver that extinguished any error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). Furthermore, the record shows that counsel was able to cross-examine the prosecution's witness and call witnesses to testify on defendant's behalf; defendant has not identified any additional evidence that could have been presented at the hearing. Thus defendant has not shown that he was prejudiced in any way by the court's ruling. *People v Wilson*, 397 Mich 76, 81; 243 NW2d 257 (1976); *People v Hill*, 88 Mich App 50, 58; 276 NW2d 512 (1979).

Affirmed.

/s/ Gary R. McDonald

/s/ Michael R. Smolenski

/s/ Kirsten Frank Kelly